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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

January 5, 1998

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N. W.  
Washington, DC 20554

Re: CC Docket No. 97-211  
Applications, as Amended, For Transfer  
of Control of MCI Communications Corp.

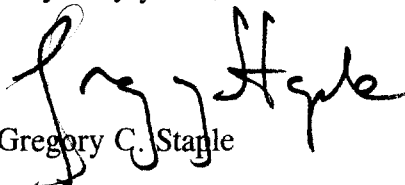
Dear Ms. Salas:

Transmitted herewith, on behalf of Telstra Corporation Limited ACN 051 775 556 (Telstra) are an original and four copies of "Comments" regarding the company's above-referenced application to transfer control of MCI Communications Corp.

A copy of Telstra's "Comments" on a 3.5" computer diskette in an IBM-compatible format using WordPerfect 5.1 for Windows is being transmitted under a separate cover letter.

Any correspondence regarding this filing should be directed to the undersigned.

Very truly yours,

  
Gregory C. Staple

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of )  
)  
Applications of WorldCom, Inc. )  
and MCI Communications Corporation ) CC Docket No. 97-211  
for Transfer of Control of MCI )  
Communications Corporation to )  
WorldCom, Inc. )

To: The Commission

**COMMENTS OF TELSTRA CORPORATION LIMITED**

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By Its Attorneys

January 5, 1998

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## SUMMARY

MCI Communications Corporation (MCI) and WorldCom Inc. (WorldCom) are two of the three largest U.S. international private line carriers; these companies also already own two of the largest Internet backbone networks in the world. Telstra is concerned therefore that the proposed merger may be anti-competitive and restrict the provision of services by or raise the price of inputs for competing, unaffiliated Internet service providers (ISPs) -- especially foreign ISPs, such as Telstra, which must acquire U.S. international private line circuits to access the U.S. Internet backbone.

Although Telstra does not oppose FCC approval of the proposed merger per se, Telstra urges the FCC carefully to investigate the extent to which WorldCom and MCI separately, or in combination, have or would have market power regarding the provision of private line facilities and Internet switching services used to furnish Internet services. Based on this investigation, the FCC should condition the merger upon the parties' acceptance of appropriate anti-competitive safeguards so that ISPs not affiliated with MCI WorldCom can access the U.S. Internet on reasonable terms and do not otherwise face undue discrimination.

In Telstra's view, the competitive provision of global Internet services requires, at a minimum, that the transfer of control of MCI be conditioned upon the agreement by MCI WorldCom to unbundle and separately to tariff terms and conditions, including cost-based rates, for certain facilities and services required by Telstra and other ISPs.

The following facilities and services should be covered by this condition: (1)

International Private Line (IPL) circuits used for Internet access; (2) the U.S. domestic

private line "tail" circuits (sometimes known as "backhaul" circuits) between major MCI WorldCom international gateways and major MCI WorldCom domestic Internet Network Access Points (NAPs); and (3) NAP port services for the high-bandwidth transmission speeds required by competing ISPs (e.g., 2 Mbps, 45 Mbps). Appropriate record keeping and reporting requirements also should be adopted to ensure that these competitive safeguards can be monitored.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Applications of WorldCom, Inc.	)	
and MCI Communications Corporation	)	CC Docket No. 97-211
for Transfer of Control of MCI	)	
Communications Corporation to	)	
WorldCom, Inc.	)	

To: The Commission

**COMMENTS OF TELSTRA CORPORATION LIMITED**

**A. Introduction and Statement of Interest**

Telstra Corporation Limited ACN 051 775 556 (Telstra), by its attorneys and pursuant to the FCC's November 25, 1997 Public Notice,<sup>1</sup> is filing these comments because it is concerned that, unless appropriate competitive safeguards are adopted by the Commission, the proposed merger of MCI Communications Corporation (MCI) and WorldCom, Inc. (WorldCom) may be anti-competitive and permit a combined MCI WorldCom to use facilities covered by FCC authorizations unreasonably to restrict access to Internet services by both foreign and domestic service providers in violation of the Communications Act of 1934, as amended,<sup>2</sup> and U.S. antitrust laws (i.e., the Sherman and Clayton Acts).<sup>3</sup> However, Telstra

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<sup>1</sup> FCC Public Notice, CC Docket No. 97-211, DA 97-2494, "WorldCom Inc. and MCI Communications Corporation Seek FCC Consent For Proposed Merger," released November 25, 1997.

<sup>2</sup> 47 U.S.C. § 151 et seq. (1997).

<sup>3</sup> 15 U.S.C. §§ 1-7 (1997); 15 U.S.C. §§ 10 et seq. (1997).

does not oppose FCC approval of the proposed merger per se.

Telstra is Australia's leading telecommunications provider, offering telephone and Internet services to domestic and foreign subscribers, including U.S. businesses. As an Internet service provider (ISP), Telstra is a major customer of U.S. International Private Line (IPL) services and related U.S. Internet access services (domestic "backhaul" circuits and Internet exchange services) provided by MCI and other U.S. carriers. Telstra also is the indirect parent of the U.S. carrier Telstra, Inc.<sup>4</sup> Telstra thus has a direct interest in the terms on which the new MCI WorldCom will offer facilities and services to both ISPs and carriers.

Telstra urges the Commission: (1) to investigate carefully the extent to which WorldCom and MCI separately, or in combination, have or would have market power regarding the provision of private line transport and Internet switching services used to furnish Internet services; and (2) in view of its investigation, as appropriate, to condition the transfer of control requested here upon MCI WorldCom's acceptance of effective competitive safeguards. The Commission should ensure that MCI WorldCom does not abuse any market power it may have in providing common carrier or enhanced services by, for example, providing more favorable Internet access to affiliated ISPs or charging unreasonable rates for bundled common carrier private line and Internet switching services.

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<sup>4</sup> See, e.g., Telstra Inc., Memorandum Opinion, Order and Certificate, DA 97-2731, released January 2, 1998 [granting TI Section 214 authority to provide facilities-based service between the U.S. and Australia].

Under the Communications Act<sup>5</sup> and agency precedent<sup>6</sup> the applicants, WorldCom and MCI, have the burden of demonstrating that the proposed merger will enhance competition and is in the public interest.<sup>7</sup> However, neither the original nor the amended transfer of control application filed by the parties in this docket contains any factual demonstration as to how the proposed transaction will enhance the competitive provision of Internet services. The parties' existing public interest showing is devoted almost exclusively to domestic and international switched telephone services, where it is claimed that "neither WorldCom nor MCI control bottleneck facilities," and that neither party is a "dominant carrier."<sup>8</sup> Significantly, no claims are made regarding the parties' current or future status in the markets for Internet backbone or other Internet services.

## **B. Discussion**

The FCC repeatedly has acknowledged the importance of preserving and encouraging a

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<sup>5</sup> 47 U.S.C. §§ 214(a), 310(d).

<sup>6</sup> See, e.g., In the Matter of The Merger of MCI Communications Corporation and British Telecommunications plc, Memorandum Opinion and Order, GN Docket No. 96-245, FCC 97-302 released September 24, 1997 (MCI-BT Order), ¶¶ 2, 28, In re Application of NYNEX Corp., Transferor, and Bell Atlantic corp., Transferee for Consent to Transfer Control of NYNEX Corporation and its Subsidiaries, Memorandum Opinion and Order, File No. ND-L-96-10, FCC 97-266, released August 14, 1997 (Bell Atlantic/NYNEX Order), ¶¶ 29, 32.

<sup>7</sup> "[T]he public interest includes consideration of the competition policies underlying the Sherman and Clayton Acts ...." MCI-BT Order, supra note 6, ¶ 3.

<sup>8</sup> "Amendment To Application of WorldCom, Inc. For Transfer of Control of MCI Communications Corporation," by WorldCom and MCI, dated November 21, 1997, at 8; See also "Applications and Request for Special Temporary Authority: Vol. I," by WorldCom, et al., dated October 1, 1997, at 39-41.

competitive market for interstate information services and the common carrier transmission facilities needed to provide them. For example, to stimulate the market for Internet services, the Commission has declined to impose access charges on ISPs<sup>9</sup>. The Commission likewise has adopted interconnection policies to ensure that incumbent carriers which also offer information services do not provide their common carrier facilities on discriminatory terms to unaffiliated enhanced service providers, including ISPs.<sup>10</sup>

Former FCC Chairman Reed Hundt also has spoken out forcefully for a more “fully developed Internet ...” and “an alternative packet switched, worldwide network ... that is universally available, competitively priced, and capable of driving our economy to new heights.”<sup>11</sup> At the same time, Chairman Hundt questioned the current economics of the

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<sup>9</sup> Access Charge Reform, First Report and Order, CC Docket Nos. 96-262 et al., FCC 97-158, released May 16, 1997, ¶ 344 (“We think it possible that had access rates applied to ISPs over the last 14 years, the pace of development of the Internet and other services may not have been so rapid.”)

<sup>10</sup> The FCC’s policy requiring certain Local Exchange Carriers (LECs) to offer Comparable Efficient Interconnection (CEI) for non-affiliated ISPs is reviewed in Bell Atlantic Telephone Companies Offer of Comparably Efficient Interconnection to Providers of Internet Access Services, Order, 11 FCC Rcd 6919 (1996). There the FCC approved a CEI plan under which Bell Atlantic unbundled and tariffed all basic transport services (e.g., Switched Multi-Megabit Data Service (SMSS), Frame Relay Service); Bell Atlantic also agreed to offer its customers a choice of ISPs. Significantly, in this proceeding, MFS Communication Company, Inc. (MFS), later acquired by WorldCom, argued for an even greater degree of unbundling (to the circuit link and port level) in order to prevent Bell Atlantic from unfairly favoring its own Internet services. Id. ¶ 15. MFS also challenged the cost basis for Bell Atlantic’s basic services. Id. ¶ 44.

<sup>11</sup> “The Internet: From Here to Ubiquity,” speech by FCC Chairman Reed E. Hundt to the Institute of Electrical and Electronic Engineers, The Symposium on Hot Chips, Palo Alto, California, August 26, 1997.

Internet, noting that “prices for many components and services are too high.”<sup>12</sup> Moreover, said Hundt, “key congestion points of the Internet are not effectively open to competition.”<sup>13</sup> Telstra has similar concerns, and particularly as to the terms under which MCI, WorldCom and other U.S. companies that are both carriers and ISPs make Internet facilities available to non-U.S. ISPs, including Telstra.

**1. Access To The U.S. Internet Backbone Is Crucial For U.S. and Foreign Internet Service Providers (ISPs)**

Though the Internet is a network of networks, the bulk of the Internet’s traffic ultimately transits U.S. Internet backbone facilities and the switches (NAPs and Internet exchanges) where traffic is routed on and off these backbone facilities. As the Wall Street Journal reports:

“Most consumers reach the Internet through an on-line service or an [ISP]... But like the side streets of a city, all of these providers eventually connect to a main highway — in this case, the giant Internet pipelines called backbones. The companies that operate these backbones -- which essentially *are* the Internet — provide the crucial links for on-line services and Internet service providers.”<sup>14</sup>

Separately today and in combination tomorrow, MCI and WorldCom will thus exercise considerable power in the market for Internet services offered by all ISPs due to their

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<sup>12</sup> Id., p. 4. For instance, Hundt said that T-1 circuits, the basic data transmission facilities purchased by ISPs, are offered at “prices ... far higher than they should be.” Id. at 5.

<sup>13</sup> Id., p. 4.

<sup>14</sup> “Would WorldCom - MCI Deal Lift Tolls on Net?” by Thomas E. Weber and Rebecca Quick, Wall Street Journal, October 2, 1997, at B1. The architecture of the Internet and the central role of U.S. Internet backbone network providers is also reviewed in Kevin Werbach, “Digital Tornado: the Internet and Telecommunications Policy,” OPP Working Paper #29, March 1997, at 11-12, App. A. See also Andreas Evagora, “World Wide Weight,” tele.com, September 1997 at 58-64 (also available at [www.teledot.com](http://www.teledot.com)).

ownership of the largest U.S. Internet backbone networks,<sup>15</sup> the associated NAPs and the related private peering arrangements<sup>16</sup> for exchanging traffic with other Internet backbone

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<sup>15</sup> WorldCom's subsidiary, UUNET Technologies, Inc. (UUNET) claims to be "the world's largest Internet service provider." "WorldCom announces: UUNET first to offer High-Capacity OC-3 Internet Access," Press Release, October 9, 1997, at < [www.us.uu.net/press/oc3.shtm](http://www.us.uu.net/press/oc3.shtm) > . A map of UUNET's global backbone can be found at [www.uu.net/lang.en/network/](http://www.uu.net/lang.en/network/). WorldCom also has agreed to acquire the Internet backbone networks of ANS Communications, Inc. (ANS) and the CompuServe Network Services (CNS) division. See "WorldCom to Acquire CompuServe (CNS) and AOL's Network Services Company, ANS Communications In \$ 1.2 Billion Internet Transaction." Press Release, September 8, 1997, (at < [www.us.uu.net/press/csaol.shtml](http://www.us.uu.net/press/csaol.shtml) > ). Prior to announcing the MCI acquisition, WorldCom stated: "The core network infrastructures of both ANS and CompuServe, together with UUNET's existing dial network, create the most significant Internet network in the World...." "WorldCom To Acquire CompuServe", *supra*.

MCI advises that "MCI Internet customers are connected to the Internet through MCI's Internet backbone. Operating at 622 megabits per second (Mbps), it is one of the fastest and largest backbone network of its kind in the world." "MCI Internet," at [www.mci.com/aboutus/products/Internet/index.shtml](http://www.mci.com/aboutus/products/Internet/index.shtml). MCI also claims to be "the leading U.S. carrier of commercial international Internet access service providing 450 connections in nearly 60 countries." MCI & the Internet Backbone," at [www.mci.com/aboutyou/interests/technology/Internet/service.shtml](http://www.mci.com/aboutyou/interests/technology/Internet/service.shtml). A map of MCI's backbone; can be found at [www.boardwatch.com/ISP/fall97/mci.html](http://www.boardwatch.com/ISP/fall97/mci.html).

<sup>16</sup> The Internet backbone networks of WorldCom, MCI and certain other major ISPs, exchange traffic at a small number of private Internet exchanges (e.g., the Metropolitan Area Exchanges (MAEs) in San Jose (MAE-West) and Northern Virginia (MAE-East) owned by the WorldCom subsidiary, MFS) based on private "peering" contracts under which each party apparently agrees to distribute without charge Internet traffic from the "peer" network to destinations on their respective networks. Neither MCI nor WorldCom, to our knowledge, have disclosed the terms of their current peering arrangements.

The criteria which WorldCom has publicly stated for peering would disqualify Telstra and many other ISPs because they lack U.S. backbone networks of adequate size and diversity (i.e., a U.S. network with DS-3 (45 Mbps) links to at least four city NAPs). See "UUNET Details Peering Strategy" < [www.usa.uu.net/press/peering.html](http://www.usa.uu.net/press/peering.html) > . An ISP which lacks a U.S. peering arrangement faces unequal access to the U.S. Internet. As WorldCom advises prospective users: "UUNET has direct peering agreements with other major Internet backbone operators in Europe and in the USA..[These] direct peering agreements mean that your traffic will not be vulnerable when problems occur due to congestion at there NAPs." "Global

providers. In addition, MCI and WorldCom have market power because they own a substantial number of the U.S. international transmission circuits which Telstra and other non-U.S. ISPs need to reach the U.S. Internet backbone.

The bundling of these two crucial service components by MCI and WorldCom is of special concern to off-shore ISPs, such as Telstra. In contrast to the world of international switched telephone services -- where overseas correspondents typically share provision of the required transmission and switching facilities by connecting at a midpoint -- major U.S. ISPs, including WorldCom and MCI, currently require foreign ISPs to pay for the whole international transmission circuit needed to access the U.S. Internet backbone.<sup>17</sup> In other words, MCI and WorldCom typically charge off-shore ISPs a bundled rate for the U.S. international half circuits (IPLs) plus the connecting U.S. "backhaul" circuits (domestic private lines) and port charges at relevant NAPs.

Moreover, the charges to Telstra are not cost-based because, among other things, they are not traffic sensitive -- that is, the charges do not reflect the fact that traffic is two-way (to Australia as well as from Australia) and thus that the underlying transport facilities also

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Transit FAQ" <[www.uk.uu.net/international/faq/](http://www.uk.uu.net/international/faq/)> .

<sup>17</sup> For example, UUNET advises wholesale customers that "[i]t is impossible for us to handle international line orders in the same way we handle orders within the USA... You will need to order the entire circuit, including the U.S. portion of the line." "UUNET Wholesale Service Descriptions," response to Question 15, <[www.us.uu.net/html/wholesale-faq.html](http://www.us.uu.net/html/wholesale-faq.html)> . MCI advises business customers: "Internet Direct Connect service for speeds 64 K - 45 Mbps is available in any country where connection to the U.S. can be made by an international private line..." "Internet - Business Internet Access," at <[www.mci.com/aboutyou/interests/Internet/connect/forbiz/intlmci.shtml](http://www.mci.com/aboutyou/interests/Internet/connect/forbiz/intlmci.shtml)> .

provide an economic benefit to the carrier which furnishes them.<sup>18</sup> Consequently, as Telstra has pointed out, the current pricing arrangements of U.S. carriers for international Internet access subsidize the U.S. ISPs of U.S. carriers, among others, and appear to be unjust and unreasonable in violation of Section 201(b) of the Communications Act.<sup>19</sup>

The foregoing Internet provisioning practices of MCI and WorldCom also raise a significant competition issue because of the limited alternatives available to Telstra (and other ISPs) for connecting to the U.S. Internet. MCI and WorldCom are two of the largest U.S. ISPs and are the second and third largest U.S. international private line carriers, respectively.<sup>20</sup> Each company owns one of the highest capacity U.S. backbone networks; operates crucial Internet switching facilities; and each company also is a party to private peering arrangements which interconnect their respective Internet backbone networks with each other and with certain other networks — peering arrangements which are not generally available to other parties, including Telstra.<sup>21</sup> In concert, therefore, these two companies would plainly have a significantly greater horizontal reach and likely would become the largest

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<sup>18</sup> Telstra estimates that Internet traffic on the U.S.-Australia route is approximately 70:30 in the U.S.-Australia vs. Australia-to-U.S. direction. KDD's deputy director for Internet business has stated: "[T]wo years ago, the total ratio of Internet traffic flow from the U.S. to Japan was 4 to 1. Now it is only 2 to 1." Andreas Evagora, "World Wide Weight," supra note 14, at 62.

<sup>19</sup> See, e.g., "Comments" and "Reply Comments" of Telstra in IB Docket No. 96-261, filed February 4 and March 31, 1997.

<sup>20</sup> See note 15 supra; Industry Analysis Division, FCC "Preliminary 1996 International Telecommunications Data," at 21 (showing that in 1996 MCI and WorldCom combined had a 45% share of the international private line market measured in revenues.)

<sup>21</sup> See supra notes 15 and 16 .

U.S. Internet backbone operator with sufficient economic power to maintain or extend the restrictive pricing and access arrangements which Telstra now faces.<sup>22</sup>

Indeed, from an antitrust standpoint, the U.S. Internet backbone has the characteristics of an "essential facility," at least so far as foreign ISPs are concerned.<sup>23</sup> Access to the backbone is essential to the provision of competitive Internet services for Telstra because Telstra customers otherwise can not efficiently reach the millions of U.S. Internet sites. The merger of two ISPs that are also two of the largest U.S. backbone operators consequently could lead to an unlawful combination which restrains commerce unless the merged entity offers unaffiliated ISPs, such as Telstra, unbundled and cost-based access to the entity's

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<sup>22</sup> The Wall Street Journal has reported that a "combined [MCI WorldCom] would control more than 60% of all U.S. traffic on the global [Internet] and a hefty share of the traffic world-wide, according to some estimates. That kind of market dominance would give WorldCom an unprecedented level of clout and, potentially, pricing power over the Internet." Thomas E. Weber and Rebecca Quick. "Would WorldCom - MCI Deal Lift Tolls on Net," supra note 14 at p. B1.

<sup>23</sup> See e.g., United States v. Terminal Railroad Ass'n, 224 U.S. 383 (1912) [Enjoining combination and unification of only independent railway facilities for crossing Mississippi River at St. Louis (two bridges and ferry) plus connecting railway facilities on both sides of river and directing terminal company and railroad company stockholders to reorganize arrangements to provide, inter alia, for use of essential east-west facilities by independent railroads on just and reasonable terms]; Associated Press v. United States, 326 U.S. 1 (1945) [Upholding injunction against enforcement of Associated Press bylaws restricting access to co-op's news services by non-member newspapers given that 95% of U.S. morning newspapers had AP news. In rejecting the defendant's attempt to use the first Amendment to shield their activities, Justice Frankfurter observed that: "The press in its commercial aspects is also subject to the regulation of the Sherman Law ... A public interest so essential to the vitality of our democratic government may be defeated by private restraints no less than by public censorship." Id. at 219. (Frankfurter, J., concurring). See also MCI Communications v. AT&T, 708 F.2d 1081 (7<sup>th</sup> Cir. 1993) [upholding antitrust award, in part, because AT&T denied MCI adequate interexchange access and switching services by controlling essential local exchange facilities.]

consolidated backbone network.

2. The FCC Should Carefully Investigate The Competitive Impact of The Proposed Merger on Internet Services And, At A Minimum, Require MCI WorldCom To Provide Unbundled, Cost-Based International Access To The U.S. Internet Backbone

In view of the foregoing, as part of the Commission's public interest review of the MCI-WorldCom merger, Telstra submits that the agency has an obligation to investigate the extent to which the market for Internet backbone and switching services offered to U.S. and non-U.S. ISPs is currently competitive. It also should examine how the proposed merger will affect competitive conditions in the relevant markets, as compared with the competitive conditions that would likely exist in said markets if MCI and WorldCom did not merge. In addition, the Commission should examine the extent to which the parties' current practice of bundling private line facilities with their Internet exchange (port) services, and private peering arrangements, may limit competition by, among other things, limiting the abilities of unaffiliated ISPs and carriers separately to purchase transport and switching service from different providers; increasing the price of the international or domestic private line facilities; subsidizing the parties' affiliated ISPs (e.g., because the private line or switching charges are not adequately cost-based).<sup>24</sup>

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<sup>24</sup> The FCC previously has been concerned about the ability of carriers which provide information services to set access terms and conditions which disadvantage competing enhanced service providers or to use regulated revenue streams to subsidize unregulated services. See e.g., Bell Atlantic CEI Order, *supra*, note 9. Safeguards also have been adopted by the FCC to prevent an international carrier with market power from withholding network information which could affect an interconnecting carriers' ability to provide enhanced as well as basic services. See e.g. 47 CFR §63.14 (6)(3) as amended by the Foreign Participation Order, FCC 97-398, released November 26, 1997, Appendix C.

To the extent a combined MCI WorldCom would have additional market power in the provision of Internet backbone and exchange services, as seems likely based on available evidence, then the FCC should also consider whether competitive safeguards or other pro-competitive commitments by the parties would mitigate this power. To reduce the potential bottleneck power of carriers, the FCC has previously required unbundling of key network or exchange access components.<sup>25</sup> Unbundling facilitates customer choice and reduces hurdles to would-be competitors by allowing them to compete without having to duplicate all of an incumbents' facilities and services.

Telstra believes that unbundling may be particularly appropriate as regards Internet backbone services because the existing (and future) market power of MCI and WorldCom stems, in part, from the joint ownership of trans-Pacific U.S. cable half-circuits (i.e. IPLs), the supply of which currently is limited, and a large U.S. Internet backbone network. So long as MCI or WorldCom (or any other U.S. international carrier/ISP) is able to bundle its ISP backbone services with its international transport services, alternative providers of both international transport and Internet backbone/switching services will be disadvantaged; the FCC's recent decision to liberalize the provision of end-to-end international circuits will be

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<sup>25</sup> To mitigate a potential international service bottleneck in connection with the BT merger, MCI and BT agreed to unbundle "backhaul" capacity between certain trans-Atlantic cable landing stations and domestic points-of-presence — a commitment which the FCC relied upon in approving the proposed transaction. See MCI BT Order, *supra*, note 6, at ¶s 136-324. The FCC's approval of the Bell Atlantic - NYNEX merger was also conditioned upon an additional unbundling of network elements required for effective competition. See Bell Atlantic/NYNEX Order, *supra*, note 6, at ¶s 180-181 and Appendix C, ¶ 5.

undercut<sup>26</sup>; second tier ISPs also will have more limited choice and prices are likely to remain significantly above cost. This is why Telstra has recommended that, at a minimum, the proposed MCI WorldCom merger be conditioned upon the parties' agreement to provide cost-based unbundled access to the Internet backbone, on tariffed terms, for U.S. and non-U.S. ISPs.

### C. Conclusion

In reviewing the prior request of MCI to merge into BT, the FCC observed that its review of a particular merger may show "that the merger is likely to benefit competition in certain relevant markets and harm competition in other[s]...."<sup>27</sup> In such cases, said the Commission, benefits and costs must be balanced, taking into account market size and consumer impact. "A significant harm to competition in one market, however, will not likely be outweighed by marginal benefits to competition in other markets."<sup>28</sup> In certain circumstances though, said the agency, prospective merger parties may make pro-competitive commitments that tip the public interest balance in their favor.<sup>29</sup>

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<sup>26</sup> The recent FCC order implementing U.S. commitments under the World Trade Organization (WTO) Basic Telecom Agreement holds out the promise of expanded competition by permitting carriers from WTO member countries to acquire U.S. international half-circuits for the provision of end-to-end service. See Foreign Participation Order, FCC 97-398, supra ¶¶9-11, 69. The ability of Telstra and other carriers from WTO countries to self-provision the international capacity they require to provide Internet services — the fastest growing international service — will be frustrated, however, if they cannot connect those circuits on non-discriminatory, cost-based terms to U.S. Internet backbones.


<sup>27</sup> BT-MCI Order, supra note 6, ¶ 10.

<sup>28</sup> Id.

<sup>29</sup> Id. (citing Bell Atlantic - NYNEX Order, supra, note 6, ¶¶ 13-14).

The forgoing FCC precis of the standard for merger reviews, issued not four months ago, is equally apt here. As stated at the outset, Telstra does not oppose the parties merger per se. However, the parties have presented no evidence to show that their merger will enhance, rather than retard, competition in the provision of Internet backbone and relevant related services. Moreover, available evidence suggests that a combined MCI WorldCom might have market power to restrict Internet access for other ISPs and raise the price of key ISP inputs. That is why Telstra requests the FCC to undertake a careful investigation of the impact of the MCI-WorldCom merger on relevant Internet markets. That is also why Telstra requests that, at a minimum, any merger be conditioned upon the provision by MCI WorldCom to U.S. and non-U.S. ISPs of unbundled cost-based access to their Internet backbone service on tariffed terms. The Commission should adopt corresponding record keeping and reporting requirements to ensure that these conditions can be monitored. The public interest in a robust and competitive global Internet requires no less.

Respectfully submitted,

By   
Alan Y. Naftalin  
Gregory C. Staple  
R. Edward Price

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By Its Attorneys

January 5, 1998

## CERTIFICATE OF SERVICE

I, Barbara Frank, a legal secretary in the firm of Koteen & Naftalin, L.L.P., hereby certify that on the 5th day of January, 1998, copies of the foregoing "Comments of Telstra Corporation Limited," were deposited in the U.S. mail, postage prepaid, or hand delivered\*, addressed to:

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